
IN THE UNITED STATE DISTRICT COURT
STATE OF UTAH, CENTRAL DIVISION

KENNETH MICHAEL PACIOREK,

Plaintiff,

vs.

LEHI CITY, et. al.,

Defendants.

REPORT & RECOMMENDATION

Case No. 2:23-cv-00905

District Court Judge Dale A. Kimball

Magistrate Judge Dustin B. Pead

BACKGROUND

The case is before the undersigned pursuant to a 28 U.S.C. § 636(b)(1)(B) referral from District Court Judge Dale A. Kimball. (ECF No. 7, Notice of Non-Consent).

On February 8, 2024, pursuant to 28 U.S.C. § 1915, the court screened Plaintiff's initial complaint (ECF No. 5, Complaint) and concluded that the pleading failed to comply with the minimum pleading requirements of Federal Rule 8 and failed to state a claim upon which relief could be granted. (ECF No. 8, Ruling and Order). The Court, however, allowed Plaintiff to file an Amended Complaint no later than February 23, 2024.

On February 17, 2024, Plaintiff filed a timely Amended Complaint. (ECF No. 10, Amended Complaint.) On March 19, 2024, the court screened the amended pleading and issued an order outlining the complaint's deficiencies. (ECF No. 12, Memorandum Decision and Order). The court further ordered Plaintiff to file a second amended complaint no later than April

19, 2024. As of this date Plaintiff has not filed an amended pleading or a motion for extension of time, and the Court's April 19, 2024 deadline has passed.

STANDARD OF REVIEW

Pursuant to Federal Rule of Civil Procedure 41(b), "[if] the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it." Fed. R. Civ. P. 41(b). "Although the language of Rule 41(b) requires that the defendant file a motion to dismiss, the Rule has long been interpreted to permit courts [as here] to dismiss actions *sua sponte* for a plaintiff's failure to . . . comply with the rules of civil procedure or court's orders. *Olsen v. Mapes*, 333 F.3d 1199, 1205 n.3 (10th Cir. 2003); *see also Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1161 (10th Cir. 2007) (citing *Petty v. Manpower Inc.*, 591 F.2d 615, 617 (10th Cir. 1979) ("a district court may, without abusing its discretion, enter such an order without attention to any particular procedures")).

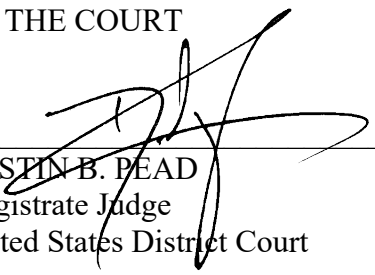
RECOMMENDATION

Plaintiff has failed to comply with the District Court's Order requiring him to file a second amended complaint no later than April 19, 2024. Federal Rule 41(b) allows for dismissal of an action based on a plaintiff's failure to comply with court orders. Fed. R. Civ. P. 41(b). Further, in failing to file an amended complaint, Plaintiff has not cured the defects of his amended pleading, as identified in this court's Order of March 19, 2024. (ECF No. 12, "Plaintiff's amended pleading contains conclusory statements regarding Defendants, but fails to provide any supporting facts or claims."). Accordingly, for these reasons, the Court RECOMMENDS that Plaintiff's case be dismissed without prejudice.

Consistent therewith, the Clerk's Office is directed to send copies of this Report and Recommendation to all parties who are hereby notified of their right to object. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The parties must file any objection to this Report and Recommendation within fourteen (14) days of service. Failure to object may constitute waiver of the objections upon subsequent review.

DATED this 23rd day of April, 2024.

BY THE COURT



DUSTIN B. PEAD
Magistrate Judge
United States District Court